

## § 239.5

## 32 CFR Ch. I (7–1–10 Edition)

of Defense or the Secretary's designee has determined that Service members are subject to hostile fire or imminent danger under Section 310(a)(2) of title 37, United States Code.

(f) *Market impact zone*. The county, city, or parish in which the primary residence is located.

(g) *Primary residence*. The one- or two-family dwelling from which employees or members regularly commute (or commuted) to their primary place of duty. Under § 239.6(a) and (b) of this part, the relevant property for which compensation might be offered must have been the primary residence of the member or civilian employee at the time of the relevant wound, injury, or illness. The first field grade officer (or civilian equivalent) in the member or employee's chain of command may certify primary residence status.

(h) *Prior fair market value (PFMV)*. The PFMV is the purchase price of the primary residence.

(i) *Reasonable effort to sell*. Applicant's primary residence must be listed, actively marketed, and available for purchase for a minimum of 120 days. With regard to marketing, applicant must demonstrate that the asking price was within the current market value of the home as determined by the USACE automated value model (AVM) for no less than 30 days. It is the applicant's responsibility to explain marketing efforts by detailing how the asking price was gradually reduced until it reached the true current fair market value (*i.e.*, maintaining a log containing date and asking price recorded over period of time indicating number of visits by prospective buyers and offers to purchase). If an applicant is unable to sell the primary residence, the HQUSACE will determine whether efforts to sell were reasonable.

(j) *Permanent change of station (PCS)*. The assignment or transfer of a member to a different permanent duty station (PDS), to include relocation to place of retirement, under a competent authorization/order that does not specify the duty as temporary, provide for further assignment to a new PDS, or direct the military service member return to the old PDS.

### § 239.5 Benefit elections.

Section 3374 of Title 42, United States Code, as amended by Section 1001 of the ARRA, Public Law 111–5, authorizes the Secretary of Defense, under specified conditions, to acquire title to, hold, manage, and dispose of, or, in lieu thereof, to reimburse for certain losses upon private sale of, or foreclosure against, any property improved with a one- or two-family dwelling owned by designated individuals.

(a) *General Benefits*: (1) If an applicant is unable to sell the primary residence after demonstrating reasonable efforts to sell (*see* Definitions, § 239.4(i) of this part), the Government may purchase the primary residence for the greater of:

(i) The applicable percentage (identified by applicant type in § 239.5(a)(4)) of the PFMV of the primary residence, or

(ii) The total amount of the eligible mortgage(s) that remains outstanding.

(2) If an applicant sells, has sold, or otherwise has transferred title of the primary residence, the benefit calculation shall be the amount of closing costs plus an amount not to exceed the difference between the applicable percentage of the PFMV and the sales price.

(3) If an applicant is foreclosed upon, the benefit will pay all legally enforceable liabilities, directly associated with the foreclosed mortgage, for example, a deficiency judgment.

(4) *Applicable Percentage*. (i) If an applicant is eligible under § 239.6(a)(3) or (4) and sells the primary residence, the applicable percentage shall be 90% of the PFMV. In addition, closing costs incurred on the sale may be reimbursed.

(ii) If an applicant is eligible under § 239.6(a)(3) or (4) and is unable to sell the primary residence after demonstrating reasonable efforts to sell, the applicable percentage shall be 75% of the PFMV. Closing costs incurred on the sale will not be reimbursed.

(iii) If an applicant is eligible under § 239.6(a)(1) or (2), the applicable percentage, regardless of whether the applicant sells the primary residence, shall be 95% of the PFMV. In addition, closing costs incurred on the sale may be reimbursed.

(b) *Rules Applicable to All Benefit Calculations.* (1) Prior to making any payment, the Government must determine that title to the property has been transferred or will be transferred as the result of making such payment. If the Government determines that making a benefit payment will not result in the transfer of title to the property, no payment will be made.

(2) A short sale will be treated as a private sale. If an applicant remains personally liable for a deficiency between the outstanding mortgage and the sale price, the amount of this deficiency may be included in the benefit, provided that the total amount of the benefit does not exceed the difference between 95 percent of the PFMV and the sales price.

(c) *Payment of Benefits.* (1) *Private Sale:* Where a benefit payment exceeds funds required to clear the mortgage and pay closing costs, benefit is paid directly to the applicant.

(2) *Government Purchase:* Benefit is paid directly to the lender in exchange for government possession of the property. Since the benefit reimburses the applicant a percentage of the applicant's purchase price, if the benefit exceeds the mortgage payoff amount, the applicant will receive a benefit payment for the difference between the mortgage payoff and the total benefit payment.

(3) *Foreclosure:* In the case of a foreclosure, benefit is paid to lien holder for legally enforceable liabilities.

(d) *Tax Implications.* Under current law, Expanded HAP benefits, including any payment of closing costs, are taxable and subject to withholding.

(1) Expanded HAP payments to, or on behalf of, all civilian applicants are considered income and are taxable as wages.

(2) Payments to, or on behalf of, all members of the Armed Forces are considered income and are taxable. Payments to military members are not subject to social security or Medicare taxes.

#### § 239.6 Eligibility.

(a) *Eligibility by Category.* Those eligible for benefits under the Expanded HAP include the following categories of persons:

(1) *Wounded, Injured, or Ill.* (i) Members of the Armed Forces:

(A) Who receive a disability rating of 30% or more for an unfitting condition (using the Department of Veterans Affairs Schedule for Ratings Disabilities), or who are eligible for Service member's Group Life Insurance Traumatic Injury Protection Program, or whose treating physician (in a grade of at least captain in the Navy or Coast Guard or colonel in Army or Air Force) certifies that the member is likely, by a preponderance of the evidence, to receive a disability rating of 30% or more for an unfitting condition (using the Department of Veterans Affairs Schedule for Ratings Disabilities) for wounds, injuries, or illness incurred in the line of duty while deployed, on or after September 11, 2001 and

(B) Who are reassigned in furtherance of medical treatment or rehabilitation, or due to retirement in connection with such disability, and

(C) Who needs to market the primary residence for sale due to the wound, injury or illness. (For example, the need to be closer to a hospital or a family member caregiver or the need to find work more accommodating to the disability.)

(ii) Civilian employees of DoD or the United States Coast Guard (excluding temporary employees or contractors, but including employees of non-appropriated fund instrumentalities):

(A) Who suffer a wound, injury, or illness (not due to own misconduct), on or after September 11, 2001, in the performance of duties while forward deployed in support of the Armed Forces, whose treating physician provides written documentation that the member, by a preponderance of the evidence, meets the criteria for a disability rating of 30% or more. As described in paragraph (a)(1) of this section, this documentation will be certified by a physician in the grade of at least captain in the Navy or Coast Guard or colonel in Army or Air Force.

(B) Who relocate from their primary residence in furtherance of medical treatment, rehabilitation, or due to medical retirement resulting from the wound, injury, or illness, and